

(1970) 10 GUJ CK 0001

In the Gujarat High Court

Case No : Criminal Revision Applications No's. 300 and 301 of 1970

The State of Gujarat

APPELLANT

Vs

Karimbhai Jamalbhai Memon and Another

RESPONDENT

Date of Decision : 12-10-1970

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 20(6), 48, 63, 67

Citation : (1972) 29 STC 95

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Advocate : K.M. Chhaya, Assistant Government Pleader, for the Appellant; K.M. Mehta, amicus curiae and B.V. Solanki, amicus curiae, for the Respondent

Judgement

1. A question of great relevance (and of equally great importance) relating to the sentencing policy has surfaced in Criminal Revision Application No. 301 of 1970 directed against an order imposing a fine of Rs. 10 upon two businessmen pleading guilty to the charge of filing false sales tax returns and of evading payment of sales tax on sales exceeding one lakh rupees. A similar question has also raised its head in Criminal Revision Application No. 300 of 1970 where the charge was in regard to the filing of a false return and on a plea of guilty a fine of Rs. 10 was imposed on the same two businessmen.

2. Criminal Revision Application No. 300 of 1970 arises out of Criminal Case No. 628 of 1970. The case was instituted upon the requisite sanction to prosecute being granted by the Assistant Commissioner of Sales Tax, Administration, Range II, Ahmedabad, u/s 67 read with section 20(6) of the Bombay Sales Tax Act, 1959, hereinafter referred to as the "Act". The sanction was embodied in order No. AC/Con/VI (391-62/B-7195) dated 31st December, 1969, which is found in the record of the trial court. The accusation against the respondents who were partners of a firm doing business in the name of Abdul Sattar and Company, was that they had failed to send true quarterly returns for the quarters ending 30th June, 1966, 30th September, 1966, 31st December, 1966, and 31st March, 1967,

and that they had thereby committed an offence punishable u/s 63(1)(c) of the Act. Upon the charge being explained to them, the respondents pleaded guilty. Thereupon the learned City Magistrate, 7th Court, Ahmedabad, by his judgment and order dated 30th April, 1970, convicted the respondents and sentenced each of them to pay a fine of Rs. 10 and in default to suffer simple imprisonment for three days. Criminal Revision Application No. 301 of 1970 arises out of Criminal Case No. 629 of 1970 in which the same two partners of the same firm were prosecuted under a similar sanction granted by the Assistant Commissioner, Sales Tax Administration, Range II, by his order No. AC/Con/VI (39/391-62/B-7194) dated 31st December, 1969. The said order is found in the record of the trial court. The charge against them was that the accused has failed to include in their accounts (i) sales to the tune of Rs. 91,271.51 during accounting year, S.Y. 2019, (ii) that they had failed to include sales to the extent of Rs. 45,233.86 during accounting period of S.Y. 2020, and (iii) that they had failed to account for sales amounting to Rs. 2,408.94 in their accounts pertaining to S.Y. 2021, and that they had thereby committed an offence punishable u/s 63(1)(i) and section 48 of the Act. Upon the charge being explained to them, the accused pleaded guilty. The learned City Magistrate, 7th Court, Ahmedabad, thereupon by his order dated 30th April, 1970, convicted the opponents u/s 63(1)(i) and section 48 of the Act and sentenced each of them to pay a fine of Rs. 10; in default of payment of fine each of them was directed to suffer simple imprisonment for three days. The State has approached this court by way of the present applications complaining that the sentence imposed on them is grossly inadequate and unduly lenient.

3. Though served with the rule in each matter, the opponents failed to appear either personally or through counsel. Shri K. M. Mehta was, therefore, appointed as amicus curiae to represent their case before this court. As the opponents are common and as the question is also almost identical, both these revision applications are for the sake of convenience being disposed of by this common judgment. The question raised in Criminal Revision Application No. 301 of 1970 is one of considerable importance and a question of principle. Section 63 of the Act inter alia provides that any dealer who is found guilty of commission of acts envisaged by clauses (a) to (m) thereof, shall on conviction be punished with simple imprisonment which may extend to six months or with fine not exceeding Rs. 2,000 or with both. Where a charge is that of filing false returns and of failing to account for sales running into as large a sum as Rs. 1,38,914.31 to impose a penalty of a fine of Rs. 10 (it is no overstatement to make) is to make mockery of the provisions contained in section 63 of the Act. To impose a fine of Rs. 10 can very well be equated with the issuance of a licence to defraud public revenues on payment of Rs. 10.

4. A time has come when the courts cannot afford to take an unduly lenient view of contravention of the provisions enacted by the Legislature to prevent fraud against public revenues. One can understand (even if one cannot condone) a poor person finding himself cornered in circumstances of economic distress

committing an offence against property. It is an aberration born out of compulsion of circumstances. One can understand an offence against the person of an individual committed on account of the emotions of an individual getting better of his reason when passion occasions a complete blackout and makes him oblivious of his obligations towards the society. When, however, offences against public revenues are committed by businessmen with deliberation, no lenient view of the matter can be taken by the courts. Let it not be forgotten that the public revenues collected by way of taxes from the citizens are inter alia employed by the State for ensuring that the citizens are not deprived of their right to possess property. If offences against public revenue are committed by businessmen, it would amount to robbing the State which prevents them from being robbed by others. This cannot be countenanced. It undermines the faith of the people in the establishment and the judicial system. It is in no small measure on account of evasion of taxes by persons who are liable to pay taxes and who can afford to pay taxes that the economic progress of the people as a whole is hindered. And every day of delay creates frustrations and unleashes movements which endanger the safety of the businessmen themselves as also of others who hold property. It is, therefore, in the interest of the society as a whole that the provisions contained in the revenue laws for bringing to book the culprits who commit offences against public revenues, are administered with the seriousness that they deserve. At the cost of the repetition it may be reiterated that to impose a fine of Rs. 10 is to make a mockery of the provisions and is equivalent to issuance of a licence to defraud public revenues on payment of Rs. 10.

5. If the courts were to impose merely fines, a businessman would weigh the risk run by him as against the advantage to be secured by him. If he can save thousands of rupees by evading payment of taxes he would not mind paying small fines which will on balance result in a profit to him. It is in such matters that the deterrent theory of punishment must be invoked. It must be deterrent to the offender and it must be deterrent to persons who are like-minded. A situation must be created where intending offenders realise that it does not pay to evade taxes and to commit offences against revenue laws. Otherwise the sentencing policy of the courts will render the provisions, which have been embedded in the revenue laws with an eye on ensuring that no contravention is committed of the relevant provisions, a dead letter in the statute-book. On principle, therefore, contraventions of such provisions must be dealt with with firm resolution and iron hand. The sentence of fine of Rs. 10, it is needless to say, is extremely lenient and grossly inadequate. The sentence must, therefore, be enhanced. A sentence of one month's simple imprisonment and of a fine of Rs. 500 will secure the ends of justice. In default of payment of fine, the accused will undergo further simple imprisonment for a term of seven days.

6. In Criminal Revision Application No. 300 of 1970, the charge is less serious than the one in Criminal Revision Application No. 301 of 1970 though the persons convicted are the same two partners of the same firm. Fine of Rs. 10 is on the face of it inadequate. As I propose to direct that the substantive sentences shall

run concurrently in both the matters, the following order is passed :-

Criminal Revision Application No. 301 of 1970 is allowed. Sentence imposed on opponent No. 1 as also on opponent No. 2 is enhanced and each of them is sentenced to suffer simple imprisonment for one month and to pay a fine of Rs. 500. In default of payment of fine, each of them shall suffer simple imprisonment for a term of seven days.

Criminal Revision Application No. 300 of 1970 is allowed. The sentence imposed on opponent No. 1 as also on opponent No. 2 is enhanced and each of them is sentenced to suffer simple imprisonment for one month and to pay a fine of Rs. 500. In default of payment of fine each of them shall suffer simple imprisonment for a term of seven days.

7. The substantive sentence of simple imprisonment for one month passed in Criminal Revision Application No. 300 of 1970 arising out of Criminal Case No. 628 of 1970 shall run concurrently with that of one month's sentence of simple imprisonment passed in Criminal Revision Application No. 301 of 1970 arising out of Criminal Case No. 629 of 1970.

8. Rule is made absolute to the aforesaid extent in both matters.

9. Applications allowed.